

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM NOTICE OF PROPOSED REGULATORY ACTIONS

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend § 599.502, subdivision (f), and to add subdivision (f) to § 599.506 to the California Code of Regulations (CCR), Title 2, entitled "Definitions, Coverage, Enrollment, Conversion, Minimum Standards, Alternative Benefit Plans, Contributions, Contingency Reserve Fund, Contracting Agency Participation and Medicare Part B." Various subdivisions have also been "renumbered" as a result of the amendments, with no substantive alterations.

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comments period closes at 5:00 p.m. on June 20, 2011. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via Fax at (916) 795-4607; e-mail at veronica_baca@calpers.ca.gov or mailed to the following address:

Veronica Baca, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, California 94229-2702
Phone: (916) 795-0713

III. PUBLIC HEARING

Pursuant to Government Code (GC) § 11346.8, a public hearing on this matter has not been scheduled. However, if an interested person or his or her duly authorized representative submits in writing to the CalPERS Regulations Coordinator a request for a public hearing no later than 15 days prior to the close of the written comment period, June 20, 2011, a public hearing shall be scheduled before the CalPERS Health Benefits Committee. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The Board has general authority to take regulatory action under GC § 22772, 22794, 22796, 22800, 22806, 22807, 22830, 22832 and 22846. The Board has specific authority to amend § 599.502, subdivision (f), and add subdivision (f) to § 599.506. Reference citation: California Government Code § 22794 and 22796.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The CalPERS provides health care benefits to State and contracting agency employees, annuitants, and eligible family members under the Public Employees' Medical and Hospital Care Act (PEMHCA) in GC § 22750 et seq. Pursuant to existing State law and regulations, CalPERS can process retroactive cancellations of coverage under various circumstances, such as when an employee reduces his or her hours or time base from full-time status. The Act and interim federal regulations prohibit CalPERS from administering rescissions due to a reduction in hours or time base, for the plan year that began January 1, 2011. The CCR § 599.502 and 599.506 must be amended to comply with these requirements.

The PEMHCA establishes rules, regulations and classifications for purposes of health coverage and enrollment eligibility. Under GC § 22772, the definition of "employee" specifically excludes "a person employed on an intermittent, irregular, or less than half-time basis, or an employee similarly situated." In addition, pursuant to GC § 22794 and 22796, the Board has authority to exclude employees based on their type of employment, including short-term, seasonal, or intermittent employment. Under PEMHCA, if an employer fails through clerical error to terminate coverage of an employee who no longer meets these criteria, CalPERS is allowed to process retroactive cancellations of coverage back to the date of the permitting event and refund any excess premiums paid for a period of up to six months. Because federal law and regulations now prohibit this practice, the proposed regulations are necessary for CalPERS to be in compliance. The proposed regulations would only allow retroactive terminations of coverage to be processed for employees who reduce their hours or time base if coverage was obtained through fraud or intentional misrepresentation of material facts. In these instances, the employee or annuitant must receive a 30-day notice prior to the termination of coverage. Otherwise, a termination of coverage for a reduction in hours or time base would have to be made prospectively.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to the California Public Employees' Retirement Law.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** While the proposed regulatory action imposes requirements on local agencies and school districts that contract with CalPERS to provide health benefits, any mandate is imposed by federal law. Reference citation: Patient Protection and Affordable Care Act, Pub. L. 111-148, Interim Final Regulations at 26 CFR 54 and 602, 29, CFR 2590, 45 CFR 144, 146, and 147.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will impact costs to State Agencies. The cost in State Fiscal Year 2010-11 is estimated at \$57,972. Annual costs thereafter are estimated at \$68,904.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will impact costs for local agencies and school districts that contract with CalPERS to provide health benefits. The cost in State Fiscal Year 2010-11 is estimated at \$24,948. Annual costs thereafter are estimated at \$49,896.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose nondiscretionary costs or savings on local agencies that contract with CalPERS to provide health benefits.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action may impact federal funding to the State.
- F. **ADVERSE ECONOMIC IMPACT:** CalPERS has made an initial determination that the proposed regulatory actions will not have a significant statewide adverse economic impact directly affecting businesses including the ability of business in California to compete with business in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. **IMPACT ON JOBS AND BUSINESS WITHIN CALIFORNIA:** The proposed regulatory action will not: (1) create or eliminate jobs

within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no significant effect on housing costs.
- J. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC SECTIONS 17500 THROUGH 17630: None.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Pat Sherard, HBB Legislative Coordinator
California Public Employees' Retirement System
P.O. Box 720724
Sacramento, California 94229-0724
Telephone: (916) 795-0885
Fax: (916) 795-4680
E-Mail: pat_sherard@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Baca, Regulations Coordinator, at the address shown in Section II.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Baca, Regulations Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at www.calpers.ca.gov.

- XI. The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations after the public comment period closes.

If the Board modifies its regulatory action, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.